justice may order such opposite party, or if the same be a body corporate, then some officer thereof, to make answer on oath, at or before a time to be fixed in said order, as to what document he so has to the matter in dispute between the parties, or what he knows as to the custody of such document, and if in his possession or control whether he objects to the production of the same and the grounds of such objection, and thereupon such court or justice may require the production of said document, or may compel the party having the same in his possession or control to allow the applicant to inspect the same, and if necessary to take examined copies of the same, and may make such further order thereon as shall be just.

This present motion is not framed in accordance with the statute and it must be dismissed.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF GEORGIA.[2]
COURT OF ERRORS AND APPEALS OF MARYLAND.[3]
COURT OF ERRORS AND APPEALS OF NEW JERSEY.[4]
SUPREME COURT OF OHIO.[5]

BANK. See *Corporation.*

BROKERS.

Right to Commissions.—Brokers in whose hands property is placed for sale, in order to earn commissions on account of the sale of such property, must either have sold it or been the procuring cause of the sale. If the purchaser, who was spoken to by them, had abandoned all idea of the trade, and they had no influence at all in bringing it about, they would not be entitled to commissions, although the purchaser may subsequently have bought from the owner: *Doonan* v. *Ives*, 71 or 72 Ga.

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[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1884. The cases will probably appear in 113 U. S. Rep.

[2] From J. H. Lumpkin, Esq., Reporter; the cases will probably appear in 71 or 72 Ga. Rep.

[3] From J. Shaaff Stockett, Esq., Reporter; to appear in 62 Md. Rep.

[4] From Hon. John H. Stewart, Reporter; to appear in 39 N. J. Eq. Rep.

[5] From E. L. DeWitt, Esq., Reporter; the cases will probably appear in 41 or 42 Ohio St. Rep.

Common Carrier.

Passenger Train—Fare of Child—Ejection from Railway Train—Measure of Damages—Punitive Damages.—A passenger on a railway train is responsible for the fare of a child under his charge, and upon refusal to pay the same, may, together with the child, be ejected from the train, although he had paid his own fare: *Phila., Wil. and Balt. Railroad Co.* v. *Hoeflich*, 62 Md.

If a conductor on a railway train finds a child sitting beside a female passenger, and knows that the father of the child is in the car, or could know upon proper inquiry, he has no right to hold the female passenger responsible for the child's fare: *Id.*

A passenger wrongfully ejected from a railway train is entitled to recover from the railway company such damages as in the judgment of the jury, under all the circumstances of the case, would be a proper compensation for the unlawful invasion of his rights as a passenger, and for the injury to his person and feelings: *Id.*

A passenger on a railway train, though forcibly and wrongfully ejected from the train by an officer of the railway company, is not entitled to punitive damages, if the wrongful act were committed in the discharge of a supposed duty, or without any evil or bad intention: *Id.*

To entitle a person to punitive damages for a wrongful act, there must be an element of fraud or malice, or evil intent, or oppression, entering into and forming part of the act: *Id.*

Constitutional Law.

Local Law—General Law Local in form.—The clause of the constitution providing that "all laws of a general nature shall have a uniform operation throughout the state," is not directory but mandatory, and a statute in violation of it is void: *Ex parte Falk*, 41 or 42 Ohio St.

A statute providing punishment for an act which is *malum in se* wherever committed, being a law of a general nature, cannot be made local on the ground that the inhibited act is a greater evil in a large city than in other parts of the state: *Id.*

Rev. Stats., sect. 1924, which provides punishment by fine and imprisonment against any person found in any city of the first grade of the first class, or within four miles thereof, having burglar's tools in his possession, is a law of a general nature within the inhibition of the constitution, but being local in form it is void: *Id.*

Corporation.

Liability of Trustees or Directors for failure to file Report.—Where a state statute required that every manufacturing, &c., corporation formed under it should publish and file a report of its capital and debts within twenty days after the first of the year; and provided that in case of failure to do so all the trustees of the company should be liable for "all the debts of the company then existing." *Held*, where there had been such a failure, that the trustees were not liable for the amount of a judgment recovered in a suit in tort against the company before the first of the year in question: *Chase* v. *Curtis*, S. C. U. S., Oct. Term 1884.

Fraud of Officer—Liability of Corporation.—Where a transaction with an incorporated banking association properly pertains to the business of such an association, neither the abuse or disregard of his authority by its managing officer or agent, nor his fraud or bad faith will be permitted to be shown in defence of such bank in an action against it by an innocent party growing out of such transaction: *Citizens' Sav. Bank* v. *Blakesley*, 41 or 42 Ohio St.

DAMAGES. See *Common Carrier.*

DIVORCE. See *Husband and Wife.*

DOMICILE. See *Husband and Wife.*

EQUITY. See *Specific Performance.*

Bond of Trustees—Injunction against Suit.—Where the trustees of a corporation gave a bond, secured by a mortgage on the corporate property, which, in strict legal effect, bound them individually, a court of equity will enjoin an action at law against them thereon, if it appears that there was no intention on their part to become personally liable: *Mops* v. *Cooper*, 39 N. J. Eq.

Agreement between Father and Sons—Allowance for Services.—It appearing that two sons had worked their father's farms, under an agreement that they should do so until they had accumulated for him a fund of $12,000, and then they should have the farms free of rent during his life, and that the specified sum had been gathered about a year before the father's death, and thereafter the sons had enjoyed the use of the farms free until their father died: *Held*, that the sons had no reason to complain, on appeal, that the chancellor had made too small an allowance to them for services rendered under that contract: *Larison* v. *Polhemus*, 39 N. J. Eq.

Parties who, in their pleadings and proofs, have insisted that they were not accountable to him for the rental value of land of which the ancestor died seised, because they were in possession as equitable owners, cannot, at the hearing, shift their ground, and claim that they were tenants of the ancestor's widow, who might have been entitled to hold the land until her dower was assigned, but who has disclaimed such a right: *Id.*

FRAUDS, STATUTE OF.

Promise to Pay for Goods Furnished to Another—Original Undertaking.—G. wished to procure credit from P., but was refused. M., who had G. in his employment at the time, told P. to let G. have goods and he would see it paid. The credit was given to M. and was refused to be given to G.: *Held*, that such promise on the part of M. was an original undertaking, and not an agreement to answer for the debt or default of another. His promise to see it paid was the same as a promise to pay it himself, and so both parties understood the transaction at the time: *Maddox* v. *Pierce*, 71 or 72 Ga.

HUSBAND AND WIFE.

Purchase by Wife at Judicial Sale—Personal Liability—Power to bind separate Estate.—A married woman who purchases real estate at a

trustee's sale, made under the sanction and direction of a court of equity, and who pays a part of the purchase-money, but fails to pay the balance, is personally liable therefor: *Fowler* v. *Jacob*, 62 Md.

A decree in personam against a feme covert, as purchaser of real estate sold under a decree in equity, to enforce the payment of the balance of the purchase-money, means only, that unless by a given time she pays such balance, any of her separate property which she would have the right to pledge in order to pay or secure a debt, may be taken in execution to pay what she owes on her purchase, or that such property is liable therefor: *Id.*

A married woman has the power to charge her separate property with the payment of her debts, and whether she does so or not, is a question of intent: and this intent may be shown on the face of the obligation creating the debt, or it may be shown aliunde: *Id.*

Divorce—Wife's Counsel Fees—Liability of Estate of Deceased Husband.—A widow cannot maintain an action against the administrator of her deceased husband, for the amount of the fees charged by her counsel for prosecuting a suit against him for a divorce *a mensa et thoro*, pending which suit he died: *McCurley* v. *Stockbridge*, 62 Md.

But counsel themselves are entitled to recover from the administrator of the deceased husband, reasonable fees for services rendered the wife in a suit against the husband for a divorce, if it be made to appear affirmatively that the suit was reasonably and justifiably instituted: *Id.*

Assignment of Account to Wife.—A son advanced money to his mother for her support during her life, under an agreement that he should be repaid at her death out of her estate. The son procured from his wife the money advanced, agreeing that she should have the account against his mother. Equity will enforce the claim in behalf of the wife: *Titus* v. *Hoagland*, 39 N. J. Eq.

The parol assignment to the wife being unknown to the mother, a counter-claim which she had against her son at her death will be set off against this claim of the wife: *Id.*

Domicile—Descent of Property—Community.—Under the laws of France, by a marriage without a contract as to property, a community of property between the husband and wife is established as an incident of the marriage. During coverture the husband has the control and management of the community property, and he may dispose of his share of the common property by his will; but the wife's share—that is, the one-half of the community property—the husband cannot dispose of, and she will be entitled to it on his death: *Harral* v. *Harral*, 39 N. J. Eq.

A person *sui juris* may change his domicile as often as he pleases. To effect such a change, naturalization in the country he adopts as his domicile is not necessary: *Id.*

To effect a change of domicile there must be a voluntary change of residence; the residence at the place chosen for the domicile must be actual; to the *factum* of residence there must be added *animus manendi*, and that place is the domicile of a person in which he has voluntarily fixed his habitation, not for a mere temporary or special purpose, but with a present intention of making it his home, unless, or until some-

thing uncertain or unexpected shall happen to induce him to adopt some other place as his permanent home: *Id.*

By the laws of France, the marriage of a foreigner in France without any contract as to property, followed by the establishment of a conjugal domicile in that country, will subject the property of the married persons to the community law, and a government authorization under article xiii. of the code is not necessary to the establishment of such a domicile: *Id.*

H., whose birthplace was in Connecticut, went to Europe in 1869, for the purpose of acquiring the German language, and completing his professional studies. In 1872 he went to Paris, where he remained; and, in February 1877, married a French woman in Paris, without any contract as to property. Immediately after the marriage he rented a house at Suresnes, a village near Paris, for two years, and took up his residence there with his wife. In May 1878, he was brought to this country, and sent to a hospital for the insane, at Philadelphia, where he died in 1881. *Held*, that by his marriage in France, and the establishment of his conjugal domicile there, his personal property became subject to the community law, and that his widow, on his death, was entitled to the one-half part thereof, notwithstanding that by his will, made before the marriage, he had bequeathed the whole of it to others: *Id.*

INJUNCTION. See *Equity.*

When it will Issue to Restrain Waste on Property in Litigation.—Where irremediable mischief is being done or threatened, going to the destruction of the substance of the estate, such as the extracting of ores from a mine, or the cutting down of timber, or the removal of coal, an injunction may issue to restrain the same as waste, though the title to the premises be in litigation. The authority of the court is exercised in such cases, through its preventive writ, to preserve the property from destruction pending legal proceedings for the determination of the title: *Ehardt* v. *Boaro* (No. 2), S. C. U. S., Oct. Term 1884.

INSURANCE.

Mutual Beneficial Society—Payment to Family or Heirs—Right to Appoint by Will.—A certificate of membership issued by an association organized under the provisions of the Revised Statutes, sect. 3630, "for the purpose of mutual protection and relief of its members, and for the payment of stipulated sums of money to the families or heirs of the deceased members," which, by its terms, is made payable to the assured member, "or any person designated by his will or his heirs, if no person is designated herein or by will," within ninety days after proof of death of the assured member, does not authorize such member, by testamentary appointment, to constitute a person a beneficiary of such insurance, who is not of the family of the assured, or may not, upon his death, become his heir; *Nat. Mut. Aid Assoc.* v. *Gonser*, 41 or 42 Ohio St.

A bequest by an assured member of such a company, of the proceeds of his certificate of membership to a stranger or a creditor, does not constitute such legatee an "heir" of the testator, in the statutory sense of that term: *Id.*

Warranty—Avoidance of Policy by False Statement—Fraudulent Intent Necessary.—Where a policy of insurance provides that any false

swearing or attempt at fraud, "or if there shall appear any fraud in the claim, by false swearing or otherwise," shall avoid such policy, the company, in order to avail itself of the defence, must show that the assured knowingly and intentionally swore falsely, or said or did that which is claimed to be fraudulent. There must be a wilful intent to defraud, rather than an innocent mistake; and this condition of the policy extends to every matter material to be stated, or which the policy in terms requires to be stated: *Watertown Fire Insurance Co.* v. *Grehan*, 71 or 72 Ga.

Limitations, Statute of.

Prescription—Wrongful Occupation of Land.—If a person takes possession of land which he knows does not belong to him or any one from whom he purchases, no prescription will run in his favor, however long he may hold possession of the same. His possession, under such circumstances, originated in fraud, and time will not cure or sanctify the fraud: *Cowart* v. *Young*, 71 or 72 Ga.

Continuing Nuisance.—Every continuance of a nuisance is a renewal of the wrong, and is actionable until abated. It is a nuisance to keep up a sewer which, when it rains, throws upon a lot, and near the house where the owner resides, excrement disagreeable to the smell, and hurtful to health, and an action therefor, should not have been dismissed, although the digging of the sewer was more than four years before the bringing of the suit: *Reid* v. *Atlanta*, 71 or 72 Ga.

Mutual Accounts.—A mutual account is one based on a course of dealing, wherein each party has given credit to the other, on the faith of indebtedness to him: *Gunn* v. *Gunn*, 71 or 72 Ga.

If the items in favor of one side are mere payments on the indebtedness to the other, the account is not mutual: *Id.*

In cases of such mutual accounts, the statute of limitations does not begin to run against either party, until the last just item in the account on either side: *Id.*

This doctrine rests, not on the notion that every credit in favor of one is an admission by him of indebtedness to the other, or a new promise to pay; but upon a mutual understanding, either express or implied from the conduct of both parties, that they will continue to credit each other until at least one desires to terminate the course of confidential dealing; and that the balance will then be ascertained, become then due, and be paid by the one finally indebted: *Id.*

As this state of things rests on an express or implied mutual understanding, either party may terminate it, at any time, by an actual payment of the balance; or by stating the account for that purpose; or by demanding a settlement privately; or by suit; or by any act which plainly shows to the other party his determination to deal no longer that way: *Id.*

Without proof of its termination the law presumes that such a mutual understanding, once proved or admitted, runs through all the dealings of the parties, until the complete bar of the statute has attached: *Id.*

Master and Servant.

Act of Servant—Responsibility of Master—Course of Employment.—A master is not responsible for the acts of his servant, unless the latter

was engaged in the performance of the service for which he was employed: *Adams* v. *Cost*, 62 Md.

Where a person placed his mare at livery, and instructed a servant of the proprietors of the stable, to take her out for exercise, such, however, being no part of the contract of livery, and while the servant had her out for such purpose she died, the proprietors of the stable cannot be held liable to the owner, though the mare was injured by, and died in consequence of, the immoderate riding and carelessness of their servant: *Id.*

Mines and Mining.

Discovery and Location—Notice of.—The discoverers of a lode or vein posted at the point of discovery a plain sign, or notice in writing, the body of which was as follows: "We, the undersigned, claim 1500 feet on this mineral-bearing lode, vein or deposit." *Held*, that this meant that they claimed 750 feet on the course of the lode or vein in each direction from that point, and that the notice was not deficient: *Erhardt* v. *Boaro*, S. C. U. S., Oct. Term 1884.

Mortgage.

Time of Recording—Presumption as to Lien—Notice.—The presumption is, that the mortgage first recorded is the first lien; and to overcome such presumption, it must be proved that the mortgagee of the mortgage first of record, at or before the time he took his mortgage, had knowledge of the existence of the mortgage first in date: *Hendrickson* v. *Woolley*, 39 N. J. Eq.

The notice, if any, must be taken with the qualifications attached to it by the agreement of the mortgagee of the unrecorded mortgage; and if such mortgagee has agreed with the mortgagor to keep his mortgage off the record, in order that the mortgagor may borrow more money on the property to be secured prior to such mortgage, and such agreement be made known to the mortgagee of the mortgage second in date, but first of record, at or before its execution, such notice will not give the unrecorded mortgage priority: *Id.*

In such case the priority of the mortgage first in date is waived: *Id.*

Municipal Corporation. See *Will.*

Subscription to the Stock of a Railroad—Special Tax for Payment of the Debt thereby Incurred.—A provision in a city charter provided that the city council should have power to levy taxes on all property within the city "to pay the debts and meet the general expenses of said city, not exceeding fifty cents on each one hundred dollars per annum on the annual assessed value thereof." Subsequently the city was authorized to subscribe to the capital stock of a railroad, and issued bonds in payment of the stock it subscribed for. *Held*, that despite the limitation in the charter, the authority to make the subscription for the stock carried with it the right and the duty to levy and collect a special tax, if necessary, to pay the debt incurred by the subscription: *Quincy* v. *Jackson*, S. C. U. S., Oct. Term 1884.

Negligence—Exercise of Police Powers—Liability for Failure to Perform.—In relation to powers and privileges which are to be exercised by a municipal corporation for the improvement of the territory

within the corporate limits, and as to which the pecuniary and proprietary interests of individuals are represented, the liability of the corporation for negligence is largely, if not entirely, measured by the liability of individuals for similar acts; but with respect to police powers, such as suppressing riots and unlawful assemblages, such corporation is, in the absence of statutory provision to the contrary, the agent of the state, and not liable for a failure to perform or negligence in performing duties in that particular imposed by statute: *Robinson* v. *Greenville*, 41 or 42 Ohio St.

An assemblage of disorderly persons, after having been engaged for several hours in discharging a cannon in a public street of a municipal corporation, seriously injured a resident of the corporation, himself without fault, by one of such discharges: *Held*, that such corporation is not liable for the injury, although the statute provides that the council shall have the care, supervision and control of the streets, "and shall cause the same to be kept open and in repair, and free from nuisance" (Rev. Stats., § 2640), and it will make no difference that the authorities of such corporation, with knowledge of such firing, took no steps to prevent the same: *Id.*

Streets—Shade Trees—Right to Remove.—Shade trees on the sidewalks and streets of a city belong to it, and in grading the streets and sidewalks, they may be removed if necessary; and an adjoining property owner certainly cannot recover therefor unless such damage was caused by negligence or carelessness in the work: *Castleberry* v. *Atlanta*, 71 or 72 Ga.

National Bank.

Taxation of Shares—At what relative Rate.—Under Sect. 5219 of the Revised Statutes, the taxation of the shares of a national bank imposed by authority of the state within which the association is located, is not to be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state." That the taxation imposed upon capital invested in national bank shares is no heavier than that imposed upon capital invested in state bank shares, or in state savings institutions, does not prevent its being an illegal discrimination, if it results in the capital so invested not being upon the same footing of substantial equality in respect of taxation by state authority as the state establishes for other moneyed capital in the hands of individual citizens, however invested: *Boyer* v. *Boyer*, S. C. U. S., Oct. Term 1884.

Negligence. See *Master and Servant; Municipal Corporation.*

Railroad—Right to Track—Trespass—Negligence—Violation of City Ordinance.—The right of way of a railroad company is the exclusive property of such company, upon which no unauthorized person has a right to be; and any one who travels upon such right of way as a foot-way, and not for any business with the railroad, is a wrongdoer and a trespasser; and the mere acquiescence of the railroad company in such user, does not give a right of way over the track, or create any obligation for special protection: *Balt. and Ohio Railroad Co.* v. *State*, 62 Md.

Where a person trespassing upon such right of way was run over by a train of cars and killed; and the place where the accident occurred, though within the corporate limits of the city of Baltimore, was not

upon any street or public way where the person killed had a right to be, it was *held*, that in the absence of other acts of negligence on the part of the agents of the railroad company, the non-compliance with a city ordinance requiring that "when a locomotive engine is used within the limits of the city, a man shall be required to ride on the front of the locomotive engine when going forward, and when going backward, on the tender, not more than twelve inches from the bed of the road," did not, per se, amount to such omission of a general and imperative duty toward the deceased, as would render the company liable in an action for damages resulting from his death: *Id.*

Railroad — Crossing Track — Contributory Negligence — Flagmen — Duty to Look and Listen — Presumption.—The general principle is, that where both parties by their negligence directly contribute to the production of the accident, neither has a right to recover of the other for injuries sustained thereby. But there are exceptions to this general rule; and if the defendant or those acting for it, had become aware of the perilous situation of the plaintiff, though that peril had been incurred by his negligent or even reckless conduct, yet the defendant or its agents would be bound to use all reasonable diligence to avoid the accident: *Maryland Central Railroad Co.* v. *Neuber*, 62 Md.

But in order that this qualification of, or exception to, the general rule, may be successfully invoked by the plaintiff, he must show knowledge on the part of the defendant, or its agents, of the peril in which he, the plaintiff, was placed, and that there was time after such knowledge within which to make the effort to save him from the impending danger: *Id.*

In the absence of statutory requirement it is now well settled, at least by a great preponderance of authority, that there is no legal obligation on a railroad company to keep at the crossings of the public country roads flagmen to give warning to travellers on such roads of the passing of trains: *Id.*

Travellers about to cross a railroad track, should, in all cases, before proceeding to cross, carefully look and listen, to ascertain whether a train is approaching; and the failure on the part of those in charge of the train to give the usual or required signals, such as blowing the whistle or ringing the bell, will not excuse or justify the traveller on the country roads, in attempting to cross a railroad track without the exercise of that reasonable precaution, of looking and listening for the approach of a train. And if the experiment be made without such precaution, the party acts at his peril; and, if an accident occurs by a collision with a passing train, the traveller must be held to have so far contributed to his own misfortune as to preclude him the right to recover against the railroad company: *Id.*

But if it be established as a fact, that the defendant, after discovering the perilous situation of the plaintiff, could, by the exercise of reasonable care, have avoided the collision, the want of care by the plaintiff in driving upon the track, would be no answer to his right to recover: *Id.*

While it is natural, and as a general rule rational, to presume that a party acts from incentives of self-preservation, this presumption can only be indulged in the absence of proof to the contrary: *Id.*

NEGOTIABLE INSTRUMENT.

Bonds of the United States—Negotiable although called.—The five-twenty United States consols of 1865 on their face were "Redeemable at the pleasure of the United States after the 1st day of July 1870, and payable on the 1st day of July 1885." The Act of July 14th 1870, which authorized the Secretary of the Treasury to "call" them, required a public notice, and provided that in three months after the date thereof, interest should cease. *Held*, that the bonds continued negotiable after the expiration of the said three months, until the period at which they were originally made payable; and that therefore the bona fide purchaser of such bonds, which had been stolen, had a good title: *Morgan* v. *United States*, S. C. U. S., Oct. Term 1884.

ORDINANCE. See *Negligence; Sunday.*

Patent—Re-issue for the Purpose of Enlarging the Claim—A Clear Mistake and Promptness both Necessary.—In order to obtain a re-issue of a patent for the mere purpose of enlarging the claim, there must be both a clear mistake, inadvertently committed, in the wording of the claim and an application for the re-issue within a reasonably short time. Therefore, in this case, the court, being of opinion that there was no mistake in the wording of the claim of the original patent, held the enlarged claims of the re-issue invalid, although the re-issue was applied for a little over three months after the original patent was granted. *Coon* v. *Wilson*, S. C. U. S., Oct. Term 1884.

Use of an old Device for a new Purpose.—Where the public has acquired in any way the right to use a machine or device for a particular purpose, it has the right to use it for all the like purposes to which it can be applied. If there is any qualification of this rule, it is that if a new and different result is obtained by a new application of an invention, such new application may be patented as an improvement on the original invention; but if the result claimed as new is the same in character as the original result, it will not be deemed a new result for this purpose: *Blake* v. *City and County of San Francisco*, S. C. U. S., Oct. Term 1884.

PAYMENT.

Check of Third Party.—To pay for a bill of goods, the buyer sent to the seller a check, drawn by one bank upon another, endorsed by the buyer to whose order the check was payable, and the seller on receiving it, sent back to the buyer a receipt acknowledging payment of the bill. At the time of sending the check by the buyer, and the receipt by the seller, it was supposed by the buyer and seller that it was good, but in fact there were no funds of the drawer in the hands of the drawee subject to the payment of the check at the time it was drawn or afterwards. *Held*, that in an action on an account for goods sold and delivered, a plea of payment cannot be maintained on the facts above stated: *Fleig* v. *Sleet*, 41 or 42 Ohio St.

RAILROAD. See *Negligence; Common Carrier.*

Power to Connect—Right to run through City—Terminus of Route.—A charter which authorized a railroad company to run its road from the

boundary between the states of South Carolina and Georgia to the city of Augusta, and, with the assent of the railroads in this state, to join its track to theirs, did not confer upon it the power to run its road through the city of Augusta so as to connect with another railroad. In order to do this express authority must be granted by the legislature: *City Council* v. *Port Royal and Augusta Railway*, 71 or 72 Ga.

Removal of Causes.

Objection that the Application was too late may be Waived.—Sect. 3 of the Act of March 3, 1875, prescribing the time when a petition for removal may be filed, &c., is not jurisdictional but modal and formal; application in due time and the proffer of a proper bond, as required by it, may be waived, either expressly or by implication; and the party at whose instance a removal has been effected, is estopped from objecting that the application therefor was too late; *Ayers* v. *Watson*, S. C. U. S., Oct. Term 1884.

Slander.

Testimony of Witness—Privileged Communication.—In an action of slander the petition charge defendant with having spoken certain false, malicious and defamatory words concerning the plaintiff, while giving his testimony before a court having jurisdiction of the subject-matter then on trial, in answer to interrogatories put to him as such witness. For aught that is stated in the petition, these answers were relative to the issue then on trial, and were honestly believed to be true, though in fact they were untrue. Upon demurrer to the petition, *held*, 1st. That the court will presume, in the absence of an averment to the contrary, that the answers of the witness were within the scope of inquiry pertinent to the issue then on trial, and that they were believed by the witness to be true. 2d. That upon the statements of the petition and the presumptions arising therefrom, the witness was absolutely privileged, and he is not liable to a civil action for so testifying: *Liles* v. *Gaston*, 41 or 42 Ohio St.

Specific Performance.

Contempt—Enforcement of Decree.—When, on decree for specific performance, the defendant is in contempt for refusal to perform, the court may give it effect by establishing the contract as if it had been executed; and by enjoining and restraining the defendant from denying its execution and delivery; and from defending himself in any action by denying its execution: *Wharton* v. *Stoutenburgh*, 39 N. J. Eq.

Such substituted decree, made while the defendant is in contempt, may be without notice, but he has the right of appeal therefrom: *Id.*

Statute. See *Constitutional Law.*

Construction—Punctuation.—In construing a statute, punctuation may aid, but does not control, unless other means fail; and in rendering the meaning of a statute, punctuation may be changed or disregarded: *Albright* v. *Payne*, 41 or 42 Ohio St.

Judicial cognisance of Local Law.—It is the duty of the courts to take judicial cognisance of public local laws, within the sphere of their operation, equally with public general laws: *Slymer* v. *Maryland*, 62 Md.

STREET. See *Municipal Corporation.*

SUNDAY.

Publication of Ordinance on.—Publication of the preliminary and other ordinances, with respect to a street improvement, in a newspaper of general circulation, in accordance with the terms of the statute, is a valid and legal publication, although such newspaper is only published on Sunday: *Hastings* v. *City of Columbus*, 41 or 42 Ohio St.

TAX AND TAXATION. See *Municipal Corporation; National Bank.*

TRUST. See *Will.*

TRUSTEES.

Orphans' Court—Opening Account.—The orphans' court has the power to open a decree settling an intermediate account of trustees, in which it appears that commissions were allowed in excess of the sum fixed by the statute: *Jackson* v. *Reynolds*, 39 N. J. Eq.

USURY.

Suit by Principal after Payment of Debt.—Where a principal debtor conveyed land to his surety, to indemnify him against loss, and, after the debt had been reduced to judgment and a levy made, the surety paid off the execution, and thereupon brought ejectment against his principal to recover the land, it was no defence to this action to allege that there was usury in the contract between the principal and the original creditors. The deed from the principal to the surety was not tainted with usury in the contract between the principal and his creditors; and as between them, the judgment fixed the indebtedness: *Maples* v. *Cox*, 71 or 72 Ga.

WILL.

Devise—Condition as to Membership of Religious Order—Public Policy—Trust—Charity—Municipal Corporation—Equity.—It is not against public policy to make a devise or bequest dependent upon the condition that the legatee should withdraw from the priesthood, or membership of any order or society connected with the Roman Catholic Church, or refrain from forming any such connection; and testator has the right to make the enjoyment of his bounty dependent upon such condition attached to it: *Barnum* v. *Mayor, &c., of Baltimore*, 62 Md.

Under its charter, the city of Baltimore has the power to accept and hold in trust, any property for educational and charitable purposes: *Id.*

Where property is held by a municipal corporation in trust, or where the trust reposed in the corporation is for a charity within the scope of its duties, a court of chancery will prevent the misapplication of the trust funds, and compel the execution of the trust. And this jurisdiction is not founded upon the statute of 43 Elizabeth, ch. 4, but is a part of the original inherent jurisdiction of the court of chancery over the subject of trusts: *Id.*